



Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-SC-23-0041]

Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Citrus Administrative Committee (Committee) to increase the assessment rate established for the 2023-2024 fiscal year and subsequent fiscal periods from \$0.015 to \$0.02 per 4/5-bushel carton or equivalent for Florida citrus handled under the marketing order. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the internet: <https://www.regulations.gov>. Comments should reference the document number, the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the

identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Branch Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Jennie.Varela@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 905 as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (referred to as “the Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of growers and handlers of fresh citrus operating within the area of production, and one public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms and supplements Executive Order 12866 and 13563 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866, 13563, and 14094 review.

This proposed rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable fruit for the 2023-2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the

petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for Florida citrus handled under the Order from \$0.015 per 4/5-bushel carton or equivalent, the rate that was initially established for the 2018-2019 fiscal year and subsequent fiscal years, to \$0.02 per 4/5-bushel carton or equivalent.

Section 905.41 authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2018-2019 fiscal year and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.015 per 4/5-bushel carton of citrus or equivalent. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS. This proposed rule would increase the assessment rate from \$0.015 to \$0.02 per 4/5-bushel carton of citrus or equivalent for the 2023-2024 fiscal year and subsequent fiscal periods.

The Committee met on August 8, 2023, and recommended 2023-2024 fiscal period expenditures of \$124,624 and an assessment rate of \$0.02 per 4/5-bushel carton of citrus or equivalent handled for the 2023-2024 fiscal year and subsequent fiscal periods.

In comparison, last year's budgeted expenditures were \$122,680. The proposed assessment rate of \$0.02 is \$0.005 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better align assessment revenue with budgeted expenses. The Committee projects handler receipts of approximately 6,700,000 4/5-bushel cartons of citrus or equivalent for the 2023-2024 fiscal year, which is about 4,764,544 cartons more than was handled for the 2022-2023 fiscal year.

The total expenditures recommended by the Committee for the 2023-2024 fiscal period are approximately \$124,624. The major budgeted expenditures include \$99,624 for management; \$10,000 for auditing; and \$5,000 for data from the Division of Fruits and Vegetables. By comparison, budgeted expenditures for these activities in the 2022-2023 fiscal period were \$97,680; \$10,000; and \$5,000, respectively. At the current assessment rate of \$0.015, the expected 6,700,000 4/5-bushel cartons or equivalent of assessable Florida citrus would generate \$100,500 in assessment revenue (6,700,000 cartons multiplied by \$0.015 assessment rate), short of the Committee's anticipated expenditures of \$124,624 for the 2023-2024 fiscal period. By increasing the assessment rate by \$0.005 to \$0.02, assessment income would generate \$134,000 (6,700,000 cartons multiplied by \$0.02 assessment rate) for the 2023-2024 fiscal year. This amount would be appropriate to ensure that the Committee has sufficient revenue to fully fund its recommended 2023-2024 fiscal period budgeted expenditures.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated 6,700,000 4/5-bushel cartons or equivalent of assessable Florida citrus, and the amount of funds available in reserve. Income derived from handler assessments (\$134,000) would be adequate to cover budgeted expenses (\$124,624). Funds available in the reserve (currently about \$165,000) are expected to be

kept within the maximum permitted by the Order (approximately two fiscal periods' expenses as authorized in § 905.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed, and further rulemaking would be undertaken as necessary. The Committee's 2023-2024 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 14 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. At the time this

analysis was prepared, the Small Business Administration (SBA) defined small agricultural growers as those having annual receipts of no more than \$4,000,000 for orange producers or \$4,250,000 for other citrus producers, and small agricultural service firms, including handlers, are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the weighted average packing house door equivalent price for fresh Florida oranges for the 2022–2023 season was approximately \$10.54 per carton with total shipments of around 3,224,000 cartons. Based on this information, the majority of orange handlers have average annual receipts of significantly less than \$34,000,000 ($\$10.54 \text{ multiplied by } 3,224,000 \text{ cartons equals } \$33,980,960$, divided by 14 handlers equals \$2,427,211 per handler). The weighted average packing house door price for other Florida citrus for the 2022-2023 season was \$19.12 per carton with total shipments of 2,804,000 cartons. Based on this information, the majority of other citrus handlers have average annual receipts of significantly less than \$34,000,000 ($\$19.12 \text{ multiplied by } 2,804,000 \text{ cartons equals } \$53,612,480$, divided by 14 handlers equals \$3,829,463 per handler).

In addition, based on the NASS data, the weighted average orange grower price for the 2022-2023 season was estimated at \$9.45 per carton of fresh oranges. Based on grower price, shipment data, and the total number of Florida orange growers, the average annual grower revenue is well below \$4,000,000 ($\$9.45 \text{ multiplied by } 3,224,000 \text{ cartons equals } \$30,466,800$, divided by 500 growers equals \$60,934 per grower). The weighted average other citrus grower price for the 2022-2023 season was estimated at \$16.28 per carton of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is well below \$4,250,000 ($\$16.28 \text{ multiplied by } 2,804,000 \text{ cartons equals } \$45,649,120$, divided by 500 growers equals \$91,298 per grower). Thus, the majority of Florida citrus handlers and growers

may be classified as small entities.

This proposed rule would increase the assessment rate for the 2023-2024 fiscal year and subsequent fiscal years from \$0.015 to \$0.02 per 4/5-bushel carton of citrus or equivalent. The Committee recommended 2023-2024 expenditures of \$124,624 and an assessment rate of \$0.02 per 4/5-bushel carton. The proposed assessment rate of \$0.02 is \$0.005 more than the previous rate. The quantity of assessable Florida citrus for the 2023-2024 season is estimated at 6,700,000 4/5-bushel cartons or equivalent. Thus, the \$0.02 rate should provide \$134,000 in assessment income (6,700,000 cartons multiplied by \$0.02 assessment rate). Income derived from handler assessments would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2023-2024 fiscal year include \$99,624 for management; \$10,000 for auditing; and \$5,000 for data from the Division of Fruits and Vegetables. Budgeted expenses for these same items in the 2022-2023 fiscal period were \$97,680; \$10,000; and \$5,000, respectively.

The Committee recommended increasing the assessment rate to cover anticipated expenses for the 2023-2024 fiscal period. Shipments for the 2023-2024 season are projected to be 6,700,000 4/5-bushel cartons or equivalent, about 2 million more than estimated for the previous year. At the current assessment rate of \$0.015, assessment income would equal \$100,500 (6,700,000 cartons multiplied by \$0.015 assessment rate), an amount below the Committee's anticipated expenditures of \$124,624 for the 2023-2024 fiscal period. By increasing the assessment rate by \$0.005, assessment income would be approximately \$134,000 (6,700,000 cartons multiplied by \$0.02 assessment rate). This amount should provide sufficient funds to meet anticipated expenses for the 2023-2024 fiscal period.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.015. However, the Committee would need

to further draw down reserves to meet its expenses. The Committee had to use some of its reserves in the 2022-2023 fiscal period after a hurricane damaged the crop, and Committee members did not want to utilize additional funds from reserves to meet 2023-2024 expenses. Consequently, the alternative of maintaining the current assessment rate was rejected.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates the average grower price for the 2023-2024 season should be approximately \$11.00 per 4/5-bushel carton of citrus or equivalent. Therefore, the estimated assessment revenue for the 2023-2024 crop year as a percentage of total grower revenue would be about 0.18 percent ($\$0.02$ divided by $\$11.00$ multiplied by 100).

This proposed rule would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operations of the Order.

The Committee's meetings are widely publicized throughout the Florida citrus industry and all interested persons are invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 8, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189 Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, AMS has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to comment on this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 905 as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS

GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2023, an assessment rate of \$0.02 per 4/5-bushel carton or equivalent is established for Florida citrus covered under the Order.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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